

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 JERRY L BRANSON,

12 Plaintiff,

13 v.

14 MICHAEL J. ASTRUE, Commissioner of
15 the Social Security Administration,

16 Defendant.

17 CASE NO. 11-cv-5933-RJB

18 REPORT AND RECOMMENDATION
19 ON PLAINTIFF'S APPLICATION TO
20 PROCEED *IN FORMA PAUPERIS*

21 Noted for December 16, 2011

22 This matter has been referred to United States Magistrate Judge J. Richard Creatura
23 pursuant to 28 U.S.C. § 636(b)(1) and Local Magistrate Judge Rule MJR 4(a)(4), and as
24 authorized by Mathews, Secretary of H.E.W. v. Weber, 423 U.S. 261, 271-72 (1976). This
matter has come before the Court on plaintiff's filing of an application to proceed *in forma*
pauperis and a complaint to review and set aside a decision of the Social Security
Administration pursuant to 42 U.S.C. § 405(g) (ECF No. 1). Because plaintiff's application
indicates that he has sufficient income to pay the \$350.00 filing fee, the undersigned
recommends that the Court deny the application.

DISCUSSION

The District Court may permit indigent litigants to proceed *in forma pauperis* following completion of a proper affidavit of indigence. See 28 U.S.C. § 1915(a). According to the Ninth Circuit, the decision to grant or refuse an application to proceed *in forma pauperis* “is within the discretion of the District Court.” Weller v. Dickson, 314 F.2d 598, 600 (9th Cir. 1963), cert. denied, 375 U.S. 845 (1963). An application to proceed *in forma pauperis*, when granted, is “granted as a privilege and not as a matter of right.” Id.

9 By requesting the Court that he be allowed to proceed *in forma pauperis*, plaintiff is
10 asking the government to incur the filing fee because he allegedly is unable to afford the costs
11 necessary to proceed with his cause of action. In his application, plaintiff indicates that he
12 receives \$3,222.00 per month from the U.S. Department of Veterans' Affairs and \$855.00 as
13 early retirement benefits from the Social Security Administration (see Motion for Leave to
14 Proceed *in Forma Pauperis*, ECF No. 1, p. 2). Plaintiff also indicates that his wife's net income
15 is \$200 every two weeks (see Plaintiff's Declaration, ECF No. 2, p. 1). The Court recognizes the
16 fact that there are six people in plaintiff's family and that one of his children is eighteen years of
17 age (see Motion for Leave to Proceed *in Forma Pauperis*, ECF No. 1, p. 2). However, the Court
18 also recognizes the fact that plaintiff's income is well above the poverty level (see
19 <http://aspe.hhs.gov/poverty/11poverty.shtml>). Therefore, the Court concludes that it is reasonable
20 for plaintiff to be required to pay the filing fee before proceeding with his cause of action.

CONCLUSION

Because it is reasonable for plaintiff to incur the costs to proceed with this cause of action, the undersigned recommends that the Court deny his application to proceed *in forma*

1 || pauperis. Accordingly, the undersigned also recommends that the Court order plaintiff to pay
2 the required filing fee within thirty (30) days of the Court's order.

3 Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have
4 fourteen (14) days from service of this Report to file written objections. See also Fed. R. Civ. P.
5 6. Failure to file objections will result in a waiver of those objections for purposes of *de novo*
6 review by the district judge. See 28 U.S.C. § 636(b)(1)(C). Accommodating the time limit
7 imposed by Rule 72(b), the clerk is directed to set the matter for consideration on December 16,
8 2011, as noted in the caption.

9 Dated this 22nd day of November, 2011.

10 
11 J. Richard Creatura
12 United States Magistrate Judge

13
14
15
16
17
18
19
20
21
22
23
24